IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.W.P.NO.905 OF 2006

Shri.Mohamed Idris Munna Qureshi]
Age 45 yers, residing at Dr.Ambedkar]
Nagar Zopadpatti, Zopda No.452]
Behind Backbay Depost, Cuffe Parade]
Mumbai-400005 (At present detained]
in Nashik Road Central Prison, Nasik)]..Petitioner
(Detenu)

Vs.

1. Shri.A.N.Roy]
Commissioner of Police]
Greater Mumbai.]
]
2. The State of Maharashtra]
(Through the Secretary]
Home Department (Spl.)]
Mantralaya, Mumbai.]
]
3. The Superintendent]
Nashik Road Central Prison]
Nashik]..Respondents

Mr.Nitin Pradhan with Mr.K.S.Patil Advocate for petitioner
Mr.D.S.Mhasipurkar A.P.P. for respondents

CORAM: SMT.RANJANA DESAI &
SMT.V.K.TAHILRAMANI,JJ.

DATE : JANUARY 23/24, 2007

ORAL JUDGMENT (PER SMT.RANJANA DESAI,J.):

1. The petitioner is detained under the Maharashtra Prevention of Dangerous Activities of Slumlords,

Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short) under the order of detention dated 8.2.2006 issued by the Commissioner of Police, Brihanmumbai. The order of detention is issued with a view to preventing the petitioner ("the detenu" for convenience) from acting in any manner prejudicial to the maintenance of public order. The order of detention along with grounds of detention and the material in support thereof, was served on the detenu on 10.2.2006. In the present petition, there is a challenge to the said order of detention.

2. The order of detention is based on two cases being C.R.No.284 of 2005 under Sections 420, 452, 386, 506(ii) read with section 34 of IPC, read with Section 3E, 3Z, 2(6) of the Maharashtra Slum Area (Improvement Clearance and Redevelopment) Act, 1971 and C.R.No.301 of 2005 registered under Section 3E, 3Z, 2(6) of the Maharashtra Slum Area (Improvement Clearance and Redevelopment) Act, 1971. It appears that Sections 452, 386 read with section 34 of IPC were added to the said case during the investigation. The order of detention is also based on incamera statements of witnesses (A) and (B)

recorded on 27.12.2005 and 31.12.2005 respectively. On the basis of the material placed before him in connection with the above cases and on the basis of incamera statements, the detaining authority was satisfied that the detenu had grabbed many huts from the hutment dwellers constructed on the land belonging to Government of Maharashtra within the jurisdiction of Collector of Mumbai at Dr.Ambedkar Nagar Hutment Area, Cuffe Parade, Mumbai-400005 by evacuating them from the hutments and sold them or given them on rental basis to needy people. The detaining authority was further satisfied that the detenu is again indulging in similar tactics of terrorising people to gain his end and that the activities of the detenu are causing and are calculated to cause harm and a feeling of insecurity amongst the people, residing in the said area. The detaining authority concluded that the activities of the detenu are prejudicial to the maintenance of public order in the said area of Brihan Mumbai. The impugned order of detention, therefore, came to be issued with a view to preventing the detenu from acting in any manner, prejudicial to the maintenance of public order.

3. We have heard at some length Mr.Pradhan, the learned counsel appearing for the petitioner/detenu. Mr.Pradhan assailed the impugned order on three grounds. Firstly, Mr.Pradhan submitted that the detaining authority has made reference to C.R.No.284 of 2005, C.R.No.285 of 2005 and C.R.No.23 of 2006 registered at Cuffe Parade Police Station in paragraph 8 of the grounds of detention. Mr.Pradhan contended that so far C.R.No.284 of 2005 and C.R.No.285 of 2005 are concerned, the detenu was supplied with the history sheets. So far as C.R.No.23 of 2006, no material in connection therewith was supplied to him. The learned counsel submitted that since these cases were relied upon by the detaining authority while issuing order of detention, it was incumbent upon the detaining authority to supply documents in connection with them to the detenu. He submitted that inasmuch as these documents have not been supplied to the detenu, the detention order must be set aside. In support of this submission, the learned counsel relied upon following judgments of the Supreme Court:

1) Smt.Icchu Devi Choraria Vs. Union of India

& Ors.;1980 (4) S.C.C. 531;

2) Kamla Kanyalal Khushalani Vs. State of Maharashtra & another; 1981 (1) S.C.C. 748;

3) Lallubhai Jogibhai Patel Vs. Union of India & Ors.; 1981 (2) S.C.C. 427;

4) Raja Vs. State of Tamil Nadu & Ors.; 2004 (7) S.C.C. 694;

5) District Collector, Ananthapur Vs. V.Laxmanna; 2005 (3) S.C.C. 663;

4. Mr.Pradhan then urged that admittedly, detenu was in jail when the order of detention was issued. The detaining authority has in the order of detention stated that the detenu may be granted bail under the normal law of the land in due course. The learned counsel contended that awareness of imminent possibility of release of the detenu on bail, must be demonstrated by necessary material supplied to the detenu. He submitted that no such material was supplied to the detenu. The learned counsel contended that the averments made in the grounds of

detention that the detenu may be granted bail in these cases under the normal law of land in due course, is not substantiated by any material and therefore, the detention order must be set aside. In this connection, the learned counsel relied upon the judgment of the Supreme Court in **Rajesh Gulati Vs. Govt. of NCT of Delhi and another; 2002 (7) S.C.C. 129** and judgment of the Division Bench of this Court to which, one of us (Smt.Tahilramani, J.) was a party in **Mohd. Ayub Alimuddin Shaikh @ Chikana Ayub Vs.M.N.Singh and Others; 2004 (2) B.C.R. (Cri.) 247.**

5. Lastly, Mr.Pradhan contended that no material was placed before the detaining authority and none was supplied to the detenu to indicate that the detenu is a slumlord and that his activities as a slumlord, have affected the public order. In this connection, Mr.Pradhan took us through the definition of "slumlord" as found in the said Act and he contended that by no stretch of imagination can the detenu be described as a "slumlord". He submitted that in any event, the alleged activities of the detenu do not affect public order. The learned counsel alleged that in the circumstances,

the order of detention may be set aside.

6. As against this, Mr.Mhaispurkar, the learned A.P.P. contended that looking to the nature of prejudicial activities in which the detenu is involved and considering the possibility of his indulging in similar prejudicial activities in future, the order of detention is perfectly justified. The learned A.P.P. contended that C.R.No.284 of 2005, C.R.No.285 of 2005 and C.R.C.No. 23 of 2006 do not form the basis of the impugned order of detention. They have been just referred to by the detaining authority in the grounds of detention to indicate the custody position of the detenu. The detenu was in jail when the order of detention was issued and it is in this context that the detaining authority has referred to these cases. The detaining authority has not relied upon these cases to arrive at his satisfaction. Therefore, there was no question of supplying any material in respect of these cases to the detenu. He submitted that therefore the order of detention, cannot be set aside on this ground.

7. Mr.Mhaispurkar submitted that in this case,

detenu has made effective representation. There is nothing to indicate that his right to make an effective representation is in any way violated. Non-supply of these documents, cannot be said to have violated the detenu's rights under Article 22(5) of the Constitution of India. In this connection, the learned A.P.P. relied upon the judgment of this Court in **Anil Dattu Pawar Vs. Himansu Roy, Commissioner of Police & Ors.; 2005 (2) B.C.R. (Cri.) 21.**

8. So far as the imminent possibility of release of the detenu on bail is concerned, Mr.Mhaispurkar distinguished the judgment of the Supreme Court in **Rajesh Gulati's** case (supra) by pointing out that there the Supreme Court was dealing with a case where repeatedly bail applications of the detenu were rejected. Such is not the case here. The learned A.P.P. contended that **Rajesh Gulati's** has no application to the facts of the present case. So far as **Mohd.Ayub's** case (supra) is concerned, the learned A.P.P. contended that in that case the detenu was involved in serious offences under Sections 392, 394 and 397 of IPC where the grant of bail was almost an impossibility. The learned

A.P.P. submitted that such is not the case here and therefore, the judgment of this Court in **Mohd. Ayub's** case also has no application to the facts of the present case.

9. Mr.Mhaispurkar then submitted that there is enough material on record to indicate that the detenu is a slumlord and his activities as a slumlord have affected the public order. He, therefore, urged that this Court should confirm the order of detention.

10. We have given anxious consideration to the submissions advanced by both sides. So far as the first ground is concerned, we find that in paragraph 8 of the grounds of detention, the detaining authority has stated that the detenu is arrested in C.R.No. 284 of 2005 and C.R.No. 285 of 2005 and he is in judicial custody. He has further stated that on 30.01.2006 the detenu was arrested in C.R.No. 23 of 2006 and he is in custody in that case till 10.02.2006. It is further stated that the detenu may be granted bail under normal law in due course. It is an admitted position that so far as C.R.No.284 of 2005 and C.R.No.285 of 2005 are concerned, only

history sheet has been supplied and so far as C.R.No.23 of 2006 is concerned, no material is supplied to the detenu. However, it is very apparent from the tenor of paragraph 8 that reference to these cases is made by the detaining authority only to show that the detenu is in custody in these cases and that there is no possibility of his release on bail. There is nothing to indicate in the grounds of detention that these cases form the basis of the order of detention. There can be no dispute about the proposition which is laid down by the Supreme Court in **Icchu Devi's** case and other cases to which our attention is drawn by Mr.Pradhan, the learned counsel for the petitioner that documents on which reliance is placed by the detaining authority, must necessarily be supplied to the detenu. However, in our opinion, in this case, the detaining authority has not placed reliance on the above cases and therefore, non-supply of documents, in connection therewith does not violate the detenu's rights under Article 22(5) of the Constitution of India.

11. We find from the affidavit of the detaining authority that the detenu has preferred

representation dated 15.2.2005 addressed to the State Government. The said representation has been duly considered by the State Government. Since the detenu had made a purposeful and effective representation, it cannot be said that on account of non-supply of aforementioned documents, the detenu's rights under Article 22(5) of the Constitution of India, are violated. In this connection, we may usefully refer to the judgment of this Court in **Anil Pawar's case (supra)**. In that case, this Court was dealing with the argument that the detenu's rights under Article 22(5) were violated because of supply of illegible documents. This Court referred to the following paragraph of judgment of the Supreme Court in **Mst.L.M.S. Ummu Saleema's** case i.e. **Mst.L.M.S.Ummu Saleema V. B.B.Gujaral, A.I.R. 1981 S.C. 1191:**

> . "The Constitutional requirement of Art. 22(5) was stated insistence that basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, clear that every failure to furnish copy of a document to which

> reference is made in the grounds of detention is not an infringement of Art. 22(5), a fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the Fundamental Rights guaranteed by Article 22(5). In our view, it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention."

. This Court held that record of the case disclosed that the petitioner therein was able to make an effective representation based on the copies of the documents served upon him along with grounds of detention and unless the petitioner is able to make out a case of prejudice, there can hardly be a case for interference with the order of detention. This Court observed that if the detenu was unable to make an effective representation, on account of illegible documents, case would have been different. In our opinion, we can draw parallel between Anil Pawar's case and the present case. Here, the detenu has not been able to demonstrate how non-supply of the above documents has affected his right to make an effective and purposeful representation against the

order of detention. In fact, he had made a representation and it was disposed of. In the circumstances, we find no substance in this contention. It is accordingly rejected.

12. It was then contended that in paragraph 8 of the grounds of detention, the detaining authority has shown awareness of the fact that the detenu had not been granted bail in C.R.Nos. 294 of 2005 and 301 of 2005. The detaining authority has further stated that the detenu was in judicial custody in C.R.No. 284 of 2005 and C.R.No. 285 of 2005. He has further stated that on 30.1.2006, the detenu was arrested in C.R.No.23 of 2006 and he was in police custody till 10.2.2006. It is further averred that the detenu may be granted bail in these cases under the normal law of land in due course and in view of his tendencies and inclination reflected in the offences committed by him, the detaining authority was further satisfied that after his release on bail, the detenu was likely to indulge in similar activities prejudicial to the maintenance of public order in future and therefore, it was necessary to detain him. It was argued that the fear expressed by the detaining authority that under the normal law

of the land in due course, the detenu is likely to be granted bail, is misplaced and unsubstantiated. It was argued that no material was placed before the detaining authority in that behalf. Reliance was placed by the learned counsel for the petitioner on the judgment of the Supreme Court in **Rajesh Gulati's case (supra)** and judgment of this Court in **Mohd. Ayub's case (supra)**.

13. In his affidavit, the detaining authority has replied to this contention as under:-

> . "I state that thus I was aware that the detenu was in custody in respect of the 2 cases relied upon by me for issuing the Order of Detention as well as he was in custody in respect of almost similar offences. I state that the detenu had moved application for bail before the learned Magistrate and the same was rejected. I state that I was aware that all the offences registered against the detenu were not punishable with life or death and were triable by the learned Magistrate, therefore, in such a matter bail is normally granted as a matter of course after completion of the investigation and filing of the chargesheet. I state that I was aware that even though bail application filed by the detenu was rejected by the learned Metropolitan Magistrate, there was no impediment for the detenu to apply for bail either in the Hon'ble Sessions Court or the Hon'ble High Court. I state that considering the

> involvement of the detenu in the prejudicial activities I was satisfied that the detenu would apply for bail under the normal law of the land he was likely to be released on bail considering the provisions of law applied against him. I state that I am also aware that very often applications are moved for bail on various grounds either than the merits of the case such as illness etc. and such applications are often considered on humanitarian ground. I state that considering the activities in which the detenu was found to be involved I was satisfied that the detenu would definitely apply for bail in near future and after getting released on bail was likely to indulge in similar prejudicial activities in future. I state that after having subjectively satisfied about the same and considering this cogent material I had issued the Order of Detention against the detenu. In view of this, the contents of the para are denied."

14. From the grounds of detention and the affidavit, it is clear that the detaining authority was aware that the detenu was in custody. He has clearly stated that the detenu was in custody in respect of almost similar offences. He has further added that offences registered against the detenu were not punishable with life or death and triable by the Magistrate and therefore, in such matters, the bail is normally granted as a matter of course after the completion of investigation and filing of the charge sheet. This averment made in the

affidavit indicates that the order of detention is passed after due application of mind and having regard to the principles underlying the law of preventive detention. In our opinion, the judgment of the Supreme Court in **Rajesh Gulati's** case has no application to the present case. In that case, it was argued before the Supreme Court that in view of the fact that several applications made by the detenu therein, had been repeatedly rejected, the satisfaction of the detaining authority that "bail is normally granted in such cases, hence, there is possibility that you will come out on bail", was unreasonable, based on no material and showed complete non-application of mind. The Supreme Court accepted this argument and observed that in fact five applications filed by the detenu for bail were rejected by the Courts indicating that that was not a normal case. The Supreme Court against the background of the peculiar facts before it, observed that "it was not clear as to how and on what material the detaining authority had concluded that bail is normally granted in such cases and there was imminent possibility that the appellant would come out on bail." Such are not the facts here. In this case, applications for bail have been rejected in

C.R.Nos. 301 of 2005 and 294 of 2005 only once. So far as the other three cases are concerned, it was possible for the detenu to prefer application for bail and as stated by the detaining authority the offences being not punishable with life or death and being triable by the learned Magistrate, bail would have been granted in these cases. The detaining authority, therefore, cannot be faulted for having expressed the apprehension that the detenu would be granted bail in these cases under the normal law of land. It is also pertinent to note that the detaining authority has also stated that bail applications are moved on several grounds either on merits or on the ground of illness etc. and such applications are often considered on humanitarian grounds. This is not a case, therefore, where the detaining authority has not applied his mind to the aspect of possibility of the detenu being released on bail.

15. In this connection, we may also refer to the judgment of the Supreme Court in **A. Geetha Vs. State of Tamil Nadu and Anr.; 2006 AIR SCW 4382**, where the detaining authority had expressed the imminent possibility of release of the detenu on

bail. Reliance was placed on the judgment of the Supreme Court in **Rajesh Gulati's** case. The Supreme Court rejected the said submission. The Supreme Court distinguished its judgment in **Rajesh Gulati's** case in the following manner:

> . "It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be *ipse dixit* of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. Appellant has not disputed correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati Vs. Govt. of NCT of Delhi and Another [2002 (7) SCC 129]*. The factual scenario in that case was entirely different. In fact, five bail applications filed, had been already rejected. In that background this Court observed that it was not "normal" case. The High Court was justified in

> rejecting the stand of the appellant. [See:*Ibrahim Nazeer V. State of Tamil Nadu and Anr. (JT 2006(6) SC 228)* and *Senthamilselvi V. State of T.N. and Another (2006(5) SCC 676)]".*

. In our opinion, the present case is clearly covered by the Supreme Court's judgment in **A.Geetha's** case (supra). The second submission of Mr.Pradhan, must, therefore, be rejected.

16. Lastly, Mr.Pradhan urged that there is no material before the detaining authority to substantiate his case that the detenu is a slumlord and his activities as slumlord have disturbed the public order. We have no hesitation in rejecting this submission. In our opinion, material in respect of C.R.No. 294 of 2005 and C.R.No. 301 of 2005 and incamera statements of witnesses (A) and (B) clearly indicate that the detenu is a slumlord and his activities as a slumlord have disturbed public order within the meaning of the said Act. This submission of Mr.Pradhan, must therefore, also be rejected. No other submissions were advanced before this Court. In our opinion, there is no infirmity in the impugned order of detention. The same is confirmed. Petition is dismissed.

[SMT.V.K.TAHILRAMANI,J.] [SMT.RANJANA DESAI, J.]